



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-1367/1
SWB:cdc

2021 ASSEMBLY BILL 1011

February 16, 2022 - Introduced by Representatives SINICKI, SUBECK, EMERSON and DRAKE, cosponsored by Senator L. TAYLOR. Referred to Committee on Health.

1 **AN ACT to amend** 146.81 (4); and **to create** 50.373, 146.83 (3f) (b) 3m. and 655.27
2 (1g) of the statutes; **relating to:** video recording of surgical procedures,
3 providing an exemption from emergency rule procedures, granting
4 rule-making authority, requiring the exercise of rule-making authority, and
5 providing a penalty.

Analysis by the Legislative Reference Bureau

This bill creates a requirement for hospitals, ambulatory surgical centers, or any other places where surgical procedures are performed — referred to in the bill as surgical facilities — to offer surgical patients the option to have their surgical procedures and discharge instructions videotaped. Surgical facilities must provide notice of the option and all related procedures and conditions set forth in the bill. For purposes of this bill, a surgical procedure is one for which a surgical or other invasive procedure is performed upon a patient under conscious sedation, deep sedation, regional anesthesia, or general anesthesia. If a patient makes a request to have a surgical procedure recorded, this bill requires that the surgical facility, or its designee, record the surgical procedure with both audio and color video. When recording of a surgical procedure is requested, the facility must continuously record with color video and audio all activity in the surgical suite from the time preparation for the surgery begins until all activity related to the surgery, including cleanup, is complete. The bill requires that the recording must also include any preoperative communication regarding the surgical procedure between the surgical practitioner

ASSEMBLY BILL 1011

and the patient and any surgical time out, regardless of where those communications take place. If the surgical patient is incapacitated, the surgical facility is required to provide another authorized person with notice of the option for video recording, and that person may request that a recording be made. Similarly, if the surgical patient is a minor, the surgical facility must notify a parent, guardian, or legal custodian of the option for video recording and allow that person to make a request for a recording on behalf of the minor. A patient may also request that his or her discharge instructions be recorded. The surgical facility may determine if these instructions will be videotaped or audiotaped.

The bill also allows a physician or certain other individual who holds a valid license or other credential that allows him or her to perform surgical procedures and who is scheduled to perform a surgical patient's surgical procedure to request that a recording be made. A health care provider who provides the patient with discharge instructions may also request that those instructions, as provided, be recorded. A surgical facility must comply with these provider requests so long as certain conditions are met, including that the surgical patient or other person authorized to make a decision on behalf of the patient does not object. Under the bill, in certain limited emergency circumstances, surgical facilities are not required to provide the option of recording or to comply with a request for recording. If the facility is not required to comply with a request for recording due to an emergency, the facility must still provide the patient with the option to have his or her discharge instructions recorded.

In return for exercising the option to have a surgical procedure recorded, under the bill, the surgical patient or another person on behalf of the patient may not disclose the recording except to limited authorized individuals, unless confidentiality is waived by the health care provider or surgical practitioner that is a subject of the video recording. Video recordings of surgical procedures created under this bill are otherwise treated as patient health care records and are subject to the same protections as other patient health care records, including all criminal and civil penalties for improper disclosure or destruction. The bill specifies that, once a recording is complete, the surgical facility or its designee must preserve the recording as part of the patient's health care record and keep a separate additional copy, but delete other copies of the recording from the recording device and elsewhere. The facility must retain the separate additional copy for at least seven years after the recording was first made.

Under the bill, a surgical facility may charge a surcharge of up to \$25 for each recording of a surgical procedure. Upon request, the surgical facility must provide to the patient, person authorized by the patient, or parent, guardian, or legal custodian of the patient one copy of the recording without an additional charge. Recordings under this bill are admissible as evidence in any civil or criminal action or proceeding related to any alleged act or omission depicted in the recording. A surgical patient may also request up to two free copies of his or her discharge instructions — one for the patient, and one for another person designated by the patient.

ASSEMBLY BILL 1011

Under this bill, a surgical patient may complete an advance request for recording, which permits an individual who is of sound mind and over the age of 18 to request video recording for future surgical procedures. The individual may complete an advance request for a single specific surgical procedure or set of discharge instructions, or for all future surgical procedures and discharge instructions to which this bill would apply. An advance request must be completed voluntarily, and must be in writing and signed and dated in the presence of a witness over the age of 18. The advance request may be revoked at any time.

This bill provides that a health care provider who knowingly refuses to comply with a patient request for recording is subject to a forfeiture of up to \$25,000 for each violation. A surgical facility that fails to provide a required notice of the option for recording, including information regarding the procedures, the fees, the conditions, the surgical practitioner's request option, and the advance request option, is subject to a forfeiture of up to \$25,000 for each violation. The bill also provides penalties for interference with an advance request for recording, and for unauthorized disclosure of a recording.

Under this bill, the Department of Health Services is required to promulgate rules establishing standards relating to the recording equipment and the recording. The department may promulgate additional rules as necessary to implement and administer the provisions of the bill. The bill also allows DHS to grant limited extensions for compliance with the requirements of the bill, if a facility provides evidence of a compelling need, financial or otherwise.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 50.373 of the statutes is created to read:

2 **50.373 Video recording of surgical procedures. (1) DEFINITIONS.** In this
3 section:

4 (a) "Conscious sedation" is a drug-induced depression of consciousness during
5 which patients respond purposefully to verbal commands, either alone or
6 accompanied by light tactile stimulation.

ASSEMBLY BILL 1011**SECTION 1**

1 (b) "Deep sedation" is a drug-induced depression of consciousness during
2 which patients cannot be easily aroused but respond purposefully following repeated
3 or painful stimulation.

4 (c) "Discharge instructions" means care instructions provided to a patient at
5 or near the time of a patient's exit or release from a surgical facility after a surgical
6 procedure.

7 (d) "General anesthesia" means a temporary status commonly produced by the
8 administration of certain intravenous drugs and inhaled gases that cause a patient
9 to be unconscious and unable to feel pain during a medical procedure.

10 (e) "Guardian" means the person named by the court having the duty and
11 authority of guardianship.

12 (f) "Health care provider" means a person or entity described under s. 146.81
13 (1) (a) to (p) and includes any surgical facility.

14 (g) "Incapacitated" means unable to receive and evaluate information
15 effectively or to communicate decisions to such an extent that an individual lacks the
16 capacity to manage his or her health care decisions.

17 (h) "Legal custodian" means a person, other than a parent or guardian, or an
18 agency to whom legal custody of the child has been transferred by a court, but does
19 not include a person who has only physical custody of the child.

20 (i) "Patient health care records" has the meaning given in s. 146.81 (4).

21 (j) "Regional anesthesia" means use of local anesthetics to make a specific part
22 of the body numb to prevent pain and allow for completion of a surgical procedure.

23 (k) "Surgical facility" means a hospital, as defined in s. 50.33 (2), an ambulatory
24 surgical center, as defined in 42 CFR 416.2, or any other place where a surgical
25 procedure is performed.

ASSEMBLY BILL 1011**SECTION 1**

1 (L) "Surgical patient" means a patient who is scheduled to undergo a surgical
2 procedure.

3 (m) "Surgical practitioner" means a physician, surgeon, or osteopath under s.
4 990.01 (28), an individual licensed to practice dentistry under ch. 447, and any other
5 individual who holds a valid license or other credential that allows him or her to
6 perform a surgical procedure.

7 (n) "Surgical procedure" means a surgical procedure for which a patient is
8 under conscious sedation, deep sedation, regional anesthesia, or general anesthesia.
9 "Surgical procedure" includes a colonoscopy or similarly invasive procedure if
10 performed under conscious sedation, deep sedation, regional anesthesia, or general
11 anesthesia.

12 (o) "Surgical time out" means a final verification of details relating to a surgery,
13 including at least confirmation of a surgical patient's identity, surgical site, and
14 planned procedure.

15 **(2) OPTION FOR RECORDING.** (a) 1. A surgical facility shall provide a surgical
16 patient the option to have the surgical facility or the surgical facility's designee make
17 a video recording of the patient's surgical procedure. For purposes of any recording
18 of a surgical procedure made under this subdivision, the surgical facility or its
19 designee shall make a continuous color video recording, including both audio and
20 video and display of the time and date. The surgical facility or its designee may not
21 interrupt the video recording within the surgical suite once started. Separate
22 interactions outside of the surgical suite, including preoperative communications
23 and surgical time outs under subd. 2, if outside of the surgical suite, and discharge
24 instructions under subd. 3, if applicable, may be separately recorded. All areas of the
25 surgical suite, including entrances and exits, must be in view on the recording and

ASSEMBLY BILL 1011**SECTION 1**

1 audible. The surgical facility or its designee shall begin the recording within the
2 surgical suite of a surgical procedure under this subdivision when preparation of the
3 surgical suite for that surgical patient's surgical procedure starts and continue the
4 recording through the period of the cleanup after that procedure and until all activity
5 in the surgical suite related to the procedure recorded is complete.

6 2. Any procedure recording made under this subsection shall include a
7 recording, under the standards described in subd. 1., of any preoperative
8 communication regarding the surgical procedure between the surgical practitioner
9 and the surgical patient and any surgical time out, regardless of where the
10 preoperative communication or surgical time out takes place.

11 3. A surgical facility shall also provide a surgical patient the option to have his
12 or her discharge instructions, as given by the patient's doctor or other health care
13 provider, recorded. If a patient chooses to have his or her discharge instructions
14 recorded, the recording may be audio only or videotaped, including audio, at the
15 option of the surgical facility.

16 (b) 1. A surgical facility shall notify a surgical patient of the option to have a
17 recording made under par. (a) and of the procedures, the fees, the conditions, the
18 surgical practitioner's request option, and the advance request option.

19 2. If the surgical patient is a minor child, the surgical facility shall notify the
20 minor child's parent, guardian, or legal custodian of the option to have a recording
21 made under par. (a) and of the procedures, the fees, the conditions, the surgical
22 practitioner's request option, and the advance request option.

23 3. If a surgical patient is incapacitated, a surgical facility shall notify a person
24 authorized by the patient under s. 146.81 (5), if available, or, if not, a relative of the

ASSEMBLY BILL 1011

1 patient of the option and information under subd. 1. and allow that person to make
2 a decision regarding whether to have a recording made under par. (a).

3 (c) A surgical practitioner who is scheduled to participate in a surgical patient's
4 surgical procedure may request that the procedure be video recorded under the
5 procedures described in this subsection. The surgical facility shall comply with the
6 surgical practitioner's request if all of the following are true:

7 1. The requesting surgical practitioner has informed the surgical patient or, if
8 the patient is a minor, a parent, guardian, or legal custodian, of the surgical
9 practitioner's request for video recording and the reason the surgical practitioner
10 has requested that recording. If the patient is incapacitated, the requesting surgical
11 practitioner shall inform a person authorized by the patient under s. 146.81 (5), if
12 available, or, if not, a relative of the patient.

13 2. The surgical patient or other person informed under subd. 1. does not object
14 to the video recording.

15 (d) A patient's doctor or other health care provider who will administer a
16 patient's discharge instructions may request that the patient's discharge
17 instructions, as given by the health care provider, be recorded under the procedures
18 described in this subsection. The surgical facility shall comply with the health care
19 provider's request if all of the following are true:

20 1. The requesting health care provider has informed the patient or, if
21 applicable, a parent, guardian, legal custodian, or person authorized by the patient,
22 of the health care provider's request for recording and the reason the health care
23 provider has requested that recording.

ASSEMBLY BILL 1011**SECTION 1**

1 2. The surgical patient or, if applicable, the parent, guardian, legal custodian,
2 person authorized by the patient under s. 146.81 (5), or relative of the patient does
3 not object to the recording.

4 (e) 1. Except as otherwise provided under this subsection, no surgical patient
5 or person on behalf of a surgical patient may disclose, unless the surgical practitioner
6 or other health care provider that is a subject of the recording waives confidentiality,
7 the content of a recording created under this section except to health care providers
8 providing care to the surgical patient, to immediate family members or a person
9 authorized by the patient under s. 146.81 (5), or to an attorney or an attorney's staff
10 for the purpose of obtaining legal advice. If legal action is taken, the surgical patient
11 or an attorney for the surgical patient may disclose the recording to additional
12 individuals if necessary for the case, but the recording shall be filed under seal if
13 permitted by the court. In all other respects, recordings under this section shall be
14 treated as patient health care records.

15 2. Notwithstanding the restrictions on disclosure under this paragraph, a
16 surgical patient or a person on behalf of a surgical patient may disclose his or her
17 discharge instructions to one or more persons designated by the surgical patient to
18 assist the surgical patient with postsurgical care, and one person designated by the
19 surgical patient may receive a free copy of the surgical patient's discharge
20 instructions as set forth under sub. (10).

21 3. Notwithstanding subds. 1. and 2. and sub. (10), a surgical facility or surgical
22 practitioner may, if authorization is granted under sub. (3), use a copy of a recording
23 made under this subsection for teaching or research purposes outside the network
24 of the surgical facility and if the surgical patient's personal identifying information
25 is redacted or if the surgical patient or other person authorized to request or consent

ASSEMBLY BILL 1011**SECTION 1**

1 to a recording under this subsection on behalf of the patient expressly consents, in
2 writing, to the use and disclosure. Notwithstanding any other provision of this
3 section, a surgical facility or surgical practitioner may, if not for teaching or research
4 purposes outside of the network of the surgical facility, be permitted to use a
5 recording made under this subsection without informed written confirmation under
6 sub. (3) if the disclosure is otherwise permitted under s. 146.82 or 146.83.

7 **(3) WRITTEN CONFIRMATION.** Before proceeding with a recording under sub. (2),
8 a surgical facility shall obtain from the surgical patient or other person authorized
9 to request or consent to a recording under sub. (2) on behalf of the patient,
10 confirmation, in writing, authorizing the recording of the surgical patient's surgical
11 procedure. If a surgical facility or surgical practitioner intends to use a recording as
12 described under sub. (2) (e) 3., the surgical facility shall provide written notice of that
13 proposed use to the surgical patient or other person authorized to request or consent
14 to a recording under sub. (2) on behalf of the patient, and obtain written
15 authorization of that use of the recording.

16 **(4) EQUIPMENT AND TECHNICAL ASSISTANCE.** A surgical facility shall have
17 available appropriate recording equipment and technical assistance as determined
18 by the department in rules promulgated under sub. (8) to comply with a surgical
19 patient request for a recording of his or her surgical procedure or discharge
20 instructions.

21 **(5) MINORS.** If a surgical patient is a minor child, a parent, guardian, or legal
22 custodian may request that a recording be made of the minor child's surgical
23 procedure or discharge instructions under sub. (2) (a).

24 **(6) EXCEPTION FOR EMERGENCIES.** (a) Notwithstanding sub. (2), a surgical
25 facility is not required to provide the option of a video recording or comply with a

ASSEMBLY BILL 1011**SECTION 1**

1 request for video recording under this section if the surgical practitioner determines
2 in the exercise of his or her professional judgment that either of the following is true:

3 1. Immediate surgery is necessary to avert death.

4 2. Other circumstances exist such that video recording would cause a delay that
5 would create a serious risk of substantial and irreversible impairment of one or more
6 of the surgical patient's bodily functions.

7 (b) The health care provider shall inform the surgical patient or, if applicable,
8 other persons as described under sub. (2) (b) of the medical indications supporting
9 the surgical practitioner's reasonable medical judgment that either of the emergency
10 conditions under par. (a) exists.

11 (c) If a surgical practitioner determines under par. (a) that an emergency exists
12 such that the surgical facility is not required to comply with a request for video
13 recording of a surgical procedure, the surgical facility shall provide the surgical
14 patient or, if applicable, other person under sub. (2) (b), with the option to have the
15 patient's discharge instructions recorded as provided under sub. (2) (a) 3.

16 **(7) EXTENSIONS FOR FACILITY COMPLIANCE.** The department may in its discretion
17 grant a surgical facility one or more 6-month extensions of the deadline for the
18 facility to comply with the requirements of this section, but may not grant more than
19 a total of 6 extensions. In order to qualify for an extension, a surgical facility shall
20 provide the department with evidence of a compelling need, financial or otherwise,
21 for additional time for compliance.

22 **(8) RULES.** (a) The department shall promulgate rules establishing standards
23 for video recording of surgical procedures, recording of discharge instructions, and
24 the use of recording equipment in the surgery and discharge settings to ensure such
25 recordings are professional and of sufficient quality to accurately portray what takes

ASSEMBLY BILL 1011**SECTION 1**

1 place when discharge instructions are given or during a surgical procedure,
2 including who enters and leaves and a view of the patient without requiring close-up
3 views of the patient or the surgical procedure itself.

4 (b) In addition to the rules required under par. (a), the department may
5 promulgate rules, as necessary, to implement and administer this section, including
6 any of the following:

7 1. Establishing criteria and procedures for providing notice and the option for
8 video recording under sub. (2).

9 2. Implementing the requirements regarding preservation and destruction of
10 recordings under sub. (9).

11 3. Establishing standards, procedures, and forms for advance requests for
12 recording under sub. (12).

13 4. Implementing the forfeiture procedures under sub. (14).

14 **(9) PRESERVATION AND DESTRUCTION.** (a) After the recording of a surgical
15 procedure under this section is complete, the surgical facility shall promptly do all
16 of the following:

17 1. Preserve the recording as part of the surgical patient's health care record,
18 which may include a copy in the patient's health care record and any electronic
19 backup of health care records kept in the normal course of business.

20 2. Preserve a separate additional electronic copy.

21 3. Except as provided under subs. 1. and 2., delete copies of the recording from
22 the recording device or any other electronic device, including any memory card or
23 flash drive.

24 (b) The surgical facility shall preserve the copy in the surgical patient's health
25 care record, including any backup copy, as it would other records in the patient's

ASSEMBLY BILL 1011**SECTION 1**

1 health care record as required by law. The surgical facility or its designee shall retain
2 the additional copy required under par. (a) 2. for at least 7 years after the recording
3 was first made.

4 **(10) FEES.** A surgical facility may charge a surcharge of up to \$25 for each
5 recording made of a surgical procedure or discharge instructions to offset the costs
6 of creating and providing a recording. The surgical facility shall provide, upon
7 request by the surgical patient, a person authorized by the surgical patient under s.
8 146.81 (5), or a parent, guardian, or legal custodian of a minor surgical patient, one
9 copy of each recording made under sub. (2) (a) 1. for which a request is made without
10 additional charge. The surgical facility shall provide to the surgical patient, upon
11 request by the surgical patient, one free copy of the discharge instructions for the
12 surgical patient and up to one additional free copy of the discharge instructions for
13 another person designated by the surgical patient. The surgical facility may charge
14 fees as described under s. 146.83 (3f) (b) 3m. for additional copies of the recordings.

15 **(11) ADMISSIBILITY OF RECORDING.** For purposes of admissibility in a civil or
16 criminal action or proceeding, an audiovisual recording created under this section
17 is a patient health care record under s. 146.81 and shall be treated as other patient
18 health care records under ss. 908.03 (6m) and 909.02 (11). If certified by an
19 appropriate record custodian, recordings under this section shall be admissible as
20 evidence in any civil or criminal action or proceeding related to any alleged act or
21 omission depicted in the recording.

22 **(12) ADVANCE REQUESTS FOR RECORDING.** (a) *Definition.* In this subsection,
23 “principal” means an individual who executes an advance request for surgical
24 procedure recording instrument.

ASSEMBLY BILL 1011

1 (b) *Advance requests for recording.* 1. An individual who is of sound mind and
2 has attained age 18 may voluntarily execute an advance request for surgical
3 procedure recording instrument. An individual for whom an adjudication of
4 incompetence and appointment of a guardian of the individual is in effect in this state
5 is presumed not to be of sound mind for purposes of this subsection and for executing
6 an advance request for surgical procedure recording instrument.

7 2. The desires of a principal who is not incapacitated supersede the effect of his
8 or her advance request for surgical procedure recording instrument at all times.

9 3. The department shall prepare and provide copies of an advance request for
10 surgical procedure recording instrument and accompanying information for
11 distribution in quantities to health care professionals, hospitals and other surgical
12 facilities, county clerks, and local bar associations and individually to private
13 persons. The department shall determine the form of the request form and
14 accompanying instructions. The department shall include on the form an option for
15 requesting the recording of a specific single surgical procedure, an option for
16 requesting the recording of discharge instructions after a surgical procedure, an
17 option for requesting the recording of all future surgical procedures under this
18 section, and an option for requesting the recording of discharge instructions after all
19 future surgical procedures under this section. The department shall also include on
20 the form a statement to the effect that a principal who exercises the option for
21 recording agrees that, unless the surgical practitioner involved waives
22 confidentiality, a recording created under this section is confidential and the
23 principal or a person on behalf of the principal may disclose it only to health care
24 providers providing care to the principal, to immediate family members or a person
25 authorized by the patient under s. 146.81 (5), or to an attorney or an attorney's staff

ASSEMBLY BILL 1011**SECTION 1**

1 for the purpose of obtaining legal advice, and if legal action is taken, the principal
2 or an attorney on behalf of the principal may disclose the recording to additional
3 individuals if necessary for the case, but it must be filed under seal if permitted by
4 the court. The form shall also include a statement that the principal or a person on
5 behalf of a principal may disclose the principal's discharge instructions to one or
6 more persons designated by the principal to assist with postsurgical care, and a
7 statement that a surgical facility or surgical practitioner may, if express
8 authorization is granted by the principal in writing, use a copy of a recording for
9 teaching or research purposes outside of the network of the surgical facility if the
10 principal's personal identifying information is redacted or if the principal or other
11 person authorized on behalf of the principal expressly consents, in writing, to the use
12 and disclosure.

13 (c) *Advance request for recording; execution.* A valid advance request for
14 surgical procedure recording shall be all of the following:

15 1. In writing.

16 2. Dated and signed by the principal or by an individual who has attained age
17 18, at the express direction and in the presence of the principal.

18 3. Signed in the presence of a witness who is an individual who has attained
19 the age 18.

20 4. Voluntarily executed.

21 (d) *Revocation.* A principal may revoke his or her advance request for surgical
22 procedure recording instrument at any time by doing any of the following:

23 1. Canceling, defacing, obliterating, burning, tearing, or otherwise destroying
24 the advance request for surgical procedure recording instrument or directing

ASSEMBLY BILL 1011

1 another in the presence of the principal to so destroy the advance request for surgical
2 procedure recording instrument.

3 2. Executing a statement, in writing, that is signed and dated by the principal,
4 expressing the principal's intent to revoke the advance request for surgical procedure
5 recording instrument.

6 3. Verbally expressing the desire to revoke the advance request for surgical
7 procedure recording instrument in the presence of a witness.

8 4. Executing a subsequent advance request for surgical procedure recording
9 instrument that replaces an existing advance request for surgical procedure
10 recording instrument.

11 **(13) PENALTIES.** (a) Except as provided under sub. (6), a health care provider
12 who knowingly refuses to comply with a surgical patient request to have his or her
13 surgical procedure or discharge instructions recorded may be subject to a forfeiture
14 of not more than \$25,000 for each violation.

15 (b) Except as provided under sub. (6), a surgical facility that fails to provide a
16 notice required under sub. (2) (b) may be subject to a forfeiture of not more than
17 \$25,000 for each violation.

18 (c) 1. Any person who negligently interferes with or violates a surgical patient's
19 advance request for surgical procedures recording instrument created under sub.
20 (12) without the consent of the principal shall be subject to a fine of at least \$500 but
21 not more than \$1,000.

22 2. Any person who intentionally interferes with or violates a surgical patient's
23 advance request for surgical procedures recording instrument created under sub.
24 (12), including intentionally concealing, canceling, defacing, obliterating, damaging,

ASSEMBLY BILL 1011**SECTION 1**

1 or destroying the instrument without the consent of the principal may be fined not
2 more than \$5,000.

3 (d) 1. For purposes of this paragraph, “disclosure” means to effect the provision
4 of access to, or the release, transfer, or divulging in any manner of information
5 outside those persons or entities authorized under in this section.

6 2. Except as otherwise authorized under this section, if a surgical practitioner
7 or other health care provider discloses a recording made under this section, the
8 standards and penalties for violations relating to patient health care records
9 described under s. 146.84 shall apply.

10 3. A surgical patient, or another person on behalf of a surgical patient, who
11 intentionally discloses a recording made under this section in violation of sub. (2) (e)
12 may be fined not more than \$3,000 per violation. If a person affirmatively discloses
13 a recording made under this section on a social media platform, that disclosure shall
14 constitute a single violation, regardless of whether the disclosure is subsequently
15 redisclosed by other social media participants. Each subsequent disclosure on a
16 separate platform shall be considered a separate violation.

17 4. Whoever threatens, with intent to extort money or any pecuniary advantage
18 whatever, or with intent to compel the person so threatened to do any act against the
19 person’s will, to disseminate or to communicate to anyone, or, except as otherwise
20 authorized under this section, does disseminate or communicate to anyone,
21 information related to a recording under this section is guilty of a Class I felony. For
22 the purpose of this subdivision, “information” has the meaning given in s. 943.31.

23 **(14) FORFEITURE PROCEDURE.** (a) The department may directly assess
24 forfeitures provided for under sub. (13). If the department determines that a
25 forfeiture should be assessed for a particular violation, the department shall send a

ASSEMBLY BILL 1011

1 notice of assessment to the health care provider. The notice shall specify the amount
2 of the forfeiture assessed, the violation and the statute or rule alleged to have been
3 violated, and shall inform the hospital of the right to a hearing under par. (b).

4 (b) A health care provider may contest an assessment of a forfeiture by sending,
5 within 30 days after receipt of notice under par. (a), a written request for a hearing
6 under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1).
7 The administrator of the division may designate a hearing examiner to preside over
8 the case and recommend a decision to the administrator under s. 227.46. The
9 decision of the administrator of the division shall be the final administrative
10 decision. The division shall commence the hearing within 60 days after receipt of the
11 request for a hearing and shall issue a final decision within 30 days after the close
12 of the hearing. Proceedings before the division are governed by ch. 227. In any
13 petition for judicial review of a decision by the division, the party, other than the
14 petitioner, who was in the proceeding before the division shall be the named
15 respondent.

16 (c) All forfeitures shall be paid to the department within 30 days after receipt
17 of notice of assessment or, if the forfeiture is contested under par. (b), within 30 days
18 after receipt of the final decision after exhaustion of administrative review, unless
19 the final decision is appealed and the order is stayed by court order. The department
20 shall remit all forfeitures paid to the secretary of administration for deposit in the
21 injured patients and families compensation fund under s. 655.27.

22 (d) The attorney general may bring an action in the name of the state to collect
23 any forfeiture imposed under sub. (13) if the forfeiture has not been paid following
24 the exhaustion of all administrative and judicial reviews. The only issue to be
25 contested in any such action shall be whether the forfeiture has been paid.

ASSEMBLY BILL 1011**SECTION 2**

1 **SECTION 2.** 146.81 (4) of the statutes is amended to read:

2 146.81 (4) “Patient health care records” means all records related to the health
3 of a patient prepared by or under the supervision of a health care provider; all
4 recordings under s. 50.373 related to the surgical patient; and all records made by
5 an ambulance service provider, as defined in s. 256.01 (3), an emergency medical
6 services practitioner, as defined in s. 256.01 (5), or an emergency medical responder,
7 as defined in s. 256.01 (4p), in administering emergency care procedures to and
8 handling and transporting sick, disabled, or injured individuals. “Patient health
9 care records” includes billing statements and invoices for treatment or services
10 provided by a health care provider and includes health summary forms prepared
11 under s. 302.388 (2). “Patient health care records” does not include those records
12 subject to s. 51.30, reports collected under s. 69.186, records of tests administered
13 under s. 252.15 (5g) or (5j), 343.305, 938.296 (4) or (5) or 968.38 (4) or (5), records
14 related to sales of pseudoephedrine products, as defined in s. 961.01 (20c), that are
15 maintained by pharmacies under s. 961.235, fetal monitor tracings, as defined under
16 s. 146.817 (1), or a pupil’s physical health records maintained by a school under s.
17 118.125.

18 **SECTION 3.** 146.83 (3f) (b) 3m. of the statutes is created to read:

19 146.83 (3f) (b) 3m. Except as provided in s. 50.373, for a copy of a video
20 recording of a surgical procedure or discharge instructions, \$25 per copy.

21 **SECTION 4.** 655.27 (1g) of the statutes is created to read:

22 655.27 (1g) DEPOSIT OF FORFEITURES. Forfeitures paid under s. 50.373 (13) shall
23 be deposited in the fund under sub. (1).

24 **SECTION 5. Nonstatutory provisions.**

